

STATE OF MICHIGAN
IN THE SUPREME COURT

ALICE JO MORALES, as Guardian and
Conservator of ANTONIO MORALES,
a/k/a ANTHONY MORALES,
a legally incapacitated person,

Plaintiff/Appellant,
Cross-Appellee

v.

AUTO OWNERS INSURANCE COMPANY,
a Michigan corporation,

Defendant/Appellee
Cross-Appellant.

Supreme Court
Docket No. 122601

Court of Appeals
Docket No. 233826

Lower Court No.: 92-2882 NF
Hon. Charles D. Corwin

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122601
PLAINTIFF/APPELLANT CROSS-APPELLEE'S BRIEF IN OPPOSITION TO
DEFENDANT/APPELLEE CROSS-APPELLANT AUTO OWNERS INSURANCE
COMPANY'S CROSS APPLICATION FOR
LEAVE TO APPEAL

PROOF OF SERVICE

FILED

DEC 12 2002

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

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COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW

- I. WHETHER THE COURT OF APPEALS PROPERLY APPROVED AN AWARD OF NO-FAULT PENALTY INTEREST WHERE THE ONLY PREDICATES FOR SUCH AN AWARD UNDER MCL 500.3142 ARE THAT THE PLAINTIFF MUST PRESENT REASONABLE PROOF OF THE FACT AND OF THE AMOUNT OF LOSS SUSTAINED AND WHERE DEFENDANT/APPELLEE/CROSS-APPELLANT IN THIS CASE DID NOT DISPUTE THAT THOSE PREDICATES WERE ESTABLISHED.

Defendant/appellee/cross-appellant says “no.”

Plaintiff/appellant/cross-appellee says “yes.”

The Court of Appeals says “yes.”

COUNTER-STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

Plaintiff-appellee accepts the vast bulk of Defendant cross-appellant's statement. This counter-statement is required to correct a few important mis-statements and omissions in Defendant cross-appellant's statement.

First, Defendant cross-appellant is correct that they paid the judgment (together with prejudgment interest) on or about September 5, 2000. Not stated is that, in reliance on this satisfaction of the judgment, the money paid on September 5, 2000 was disbursed pursuant to order of the Bankruptcy court. That order is attached as Exhibit A.

Second, Defendant cross-appellant is correct that it filed a supplemental brief on or about December 29, 2000, some 4 months after it paid the judgment. Not stated is that this was the first time it ever raised an issue regarding the trial court's order on prejudgment interest. In fact, the parties stipulated to the amount of prejudgment interest to be paid. In other words, Defendant cross-appellant paid the judgment (including prejudgment interest), never stating or even implying that it would contest *this portion* of the trial court's judgment. Rather, Defendant cross-appellant did *not* pay the no-fault penalty interest portion of the judgment, always making clear that it would contest *that* portion of the judgment. This fact, omitted by Defendant cross-appellant, is essential to the appeal sought by Plaintiff/Appellant/Cross-Appellee.

Third, Defendant cross-appellant repeatedly misstates the basis for the jury's finding of no-fault coverage, as they did in the courts below. Defendant cross-appellant states that the policy "was imposed only by virtue of estoppel..." (Defendant cross-appellant's brief on cross-application, p5).

To the contrary, and as stated by the Court of Appeals in footnote 3:

“Defendant’s argument is premised on its view that the insurance policy had lapsed but that a new contract of insurance was created by the jury’s verdict estopping defendant from denying coverage. This argument ignores our Supreme Court’s determination in this case that application of the doctrine of equitable estoppel does not create a new contract of insurance, but rather merely prevents an insurer ‘from enforcing a single provision in the already existing contract.’ *Morales v Auto-Owners Ins Co*, 458 Mich 288, 298; 582 NW 2d 776 (1998).

This is the law of the case, and Defendant cross-appellant is not free to depart from it, or to continue to mis-characterize the issue to suit its argument.¹

Fourth, Defendant cross-appellant repeatedly states that their eventual payment of the jury verdict was prompt and that there was therefore no delay or misconduct in making payment.² Very much to the contrary, the jury issued its verdict on February 24, 2000, and Auto-Owners delayed some 6 ½ months after the jury’s verdict to make payment. The jury’s verdict of course established coverage, the quintessential element brandished by Defendant cross-appellant as the prerequisite for being liable for prejudgment interest.

Fifth, it must also be noted that Defendant cross-appellant has worked a not so subtle shift in their argument from the Court of Appeals to here. There, they argued that the denial was in good faith, based on their belief that there was no coverage. Here, they argue that there can be no

¹ Under the law of the case doctrine, “...if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same.” *CAF Investment Co v Saginaw Twp*, 410 Mich. 428, 454; 302 N.W.2d 164 (1981).

² Defendant cross-appellant variously characterizes the payment made on September 5, 2000 as “prompt” (brief, p8), that “[I]n this case, there was no misconduct and no recalcitrance in making payment.”(p14), and that “[H]ere, Auto-Owners was not dilatory or recalcitrant in paying a claim. *Once the jury’s verdict was reduced to judgment*, it promptly paid the full amount of benefits claimed to be due and owing.” (p17, emphasis supplied).

reasonable proof of the fact and amount of loss without establishing the existence of coverage. Their argument has obviously morphed to meet the plain language of §3142, but it is no less false this time around.

TABLE OF AUTHORITIES

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<i>Bach v State Farm</i> , 137 Mich App 128 (1984)	5
<i>Bloemsma v ACIA</i> , 174 Mich App 692, 698 (1989)	3
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<i>Gobler v Auto-Owners (On Rem)</i> , 162 Mich App 717, 719; 413 NW2d 92 (1987)	6
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<i>Perez v Keeler Brass Company</i> , 461 Mich 602; 608 NW2d 45 (2000)	1

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<i>Shanafelt v Allstate</i> , 217 Mich App 625 (1996)	8
<i>Sharpe v DAIIE</i> , 126 Mich App 144; 337 NW2d 12 (1983)	4, 5, 7

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ARGUMENT

I. WHERE THE ONLY PREDICATES FOR AN AWARD OF PENALTY INTEREST UNDER MCL 500.3142 ARE THAT THE PLAINTIFF MUST PRESENT REASONABLE PROOF OF THE FACT AND OF THE AMOUNT OF LOSS SUSTAINED AND WHERE DEFENDANT/APPELLEE/CROSS-APPELLANT IN THIS CASE DID NOT DISPUTE THAT THOSE PREDICATES WERE ESTABLISHED, THE COURT OF APPEALS CORRECTLY AFFIRMED THE TRIAL COURT’S AWARD OF NO-FAULT PENALTY INTEREST.

A. ESTABLISHMENT OF NO-FAULT COVERAGE IS NOT A PREDICATE FOR NO-FAULT PENALTY INTEREST UNDER MCL 500.3142

The essence of Defendant cross-appellant’s argument on appeal is that nothing can be owed until coverage is established; not benefits, not penalties. To the contrary, the no-fault penalty interest statute does not require proof of *coverage*; it requires only proof of the *fact and the amount of loss*:

“Personal protection benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained.” MCL 500.3142.

Defendant cross-appellant argues that this statute cannot mean what it plainly says, that benefits cannot be overdue if coverage has not been established. That’s not right. An insurer may not pay benefits where coverage has not been established; but it does so at the risk that it will owe penalty interest if coverage eventually is established. Why? Because the statute says so; the statute says that the only predicate for penalty interest “is reasonable proof of the fact and of the amount of loss sustained.”

The no-fault law contains no additional requirement that coverage must exist *before* no-fault penalty interest can be assessed. Adding such a requirement, as Defendant cross-appellant seeks, would work a judicial amendment to the law. This of course is impermissible. *Perez v Keeler Brass Company*, 461 Mich 602; 608 NW2d 45 (2000).

Defendant cross-appellant tries hard to suggest that §3142 is ambiguous:

“At a minimum, the statute is ambiguous as two interpretations of the statute can be derived from its language. Under the Court of Appeals’ interpretation, a claimant does not need to make a showing of coverage (i.e., the entitlement to no-fault benefits), but only proof that medical bills were incurred, making the payment of those bills ‘due.’ Under another interpretation of the statutory language (that Auto-Owners submits is proper), a claimant must establish the existence of an entitlement to personal injury benefits under the Act, as well as reasonable proof that the expenses have been incurred before benefits are ‘due.’ Because of this ambiguity, the purpose of the penalty interest provision can be considered.”

This so-called “ambiguity” is nothing more than wishful thinking on the part of Defendant cross-appellant. §3142 simply does not permit the interpretation sought by Defendant cross-appellant. Wishing it doesn’t make it so. Reviewing courts will not read into a statute an ambiguity that doesn’t exist. *People v McIntire*, 467 Mich 147, 155 (1999).

B. THE JURISPRUDENCE OF NO-FAULT §3142 IS CONSISTENT WITH THE PLAIN LANGUAGE OF THE STATUTE AND THE NOTION THAT AN INSURANCE DEFENDANT CONTESTS COVERAGE AT RISK OF NO-FAULT PENALTIES

As noted in the Counter-Statement of Facts above, Defendant cross-appellant’s position in the Court of Appeals was that it committed no misconduct and therefore should be subject to no-fault penalty interest. Now realizing that this argument carries no weight under the plain text of §3142, Defendant cross-appellant has shifted its position to now argue that no-fault penalty interest cannot be awarded absent a finding of coverage. Either way, §3142 contains no such restriction. The body of jurisprudence supporting the application of the simple predicates of §3142 is consistent, long-standing, and overwhelming. Consider just the following:

GENERAL CASES ON NO-FAULT PENALTY INTEREST

“Interest is owing because the defendant’s defense is not recognized by §3142(2). The plaintiff’s right to interest is not dependent upon the presence or absence of the insurer’s good faith in rejecting a claim. A carrier rejects a claim at its own risk. It will owe interest if its interpretation of the statute proves to be erroneous. Cit. Om. If this result seems harsh, it must be remembered that the defendant had the full and unimpeded use of the sum involved during this dispute.” *Nash v DAIIE*, 120 Mich App 568, 572-3 (1982).

“...§3142 interest is triggered when personal protection insurance benefits become overdue, i.e., 30 days after an insurer receives reasonable proof of a claim. Once again, there is no qualification as to the good faith with which the insurer denies liability.” *Johnston v DAIIE*, 124 Mich App 212 (1983).

“Until these parallel litigation tracks were resolved, neither party knew what amount of workers’ compensation or no-fault benefits defendant would be obligated to pay, or whether any setoff of no-fault benefits would be required or possible. Defendant presumably sought to avoid paying benefits for good faith reasons. Such was its right. We believe, however, in doing so defendant took the risk that it would be ultimately liable for no-fault benefits plus interest...Having lost its gamble, we believe defendant must now pay §3142 interest up to the time plaintiff’s entitlement to both workers’ compensation and no-fault benefits became final.” *Joiner v Michigan Mutual Ins Co*, 161 Mich App 285, 294-5 (1987).

“Unlike the calculation of attorney fees, an insurer’s good faith in withholding payment is irrelevant to liability under the penalty interest statute.” *Bloemsma v ACIA*, 174 Mich App 692, 698 (1989).

“Defendant asserts that its refusal to pay was not unreasonable until the Supreme Court rendered its decision in the prior appeal and, therefore, interest should not begin accruing until thirty days after that date...”

“Contrary to what defendant asserts, a reasonable refusal to pay does not toll the accrual of penalty interest. Penalty interest must be assessed against a no-fault insurer if the insurer refused to pay benefits and is later determined to be liable. This is true even where the refusal to pay was based on then-existing law and was made in good faith. Cit om.” *Clute v Gen Accident Co*, 179 Mich App 527, 538-539 (1989).

“Defendants’ contention that they acted reasonably and in good faith is not relevant under the interest provision in §3142. cit. Om. Although defendants had the right to contest payment of no-fault benefits to plaintiff, in doing so they took the risk that they ‘would be ultimately liable for no-fault benefits plus interest.’ Cit. Om.” *Conway v Continental Ins Co*,

180 Mich App 447 (1989).

**Defendant cross-appellant’S CASES ON
NO-FAULT PENALTY INTEREST**

Defendant cross-appellant was able to find several cases in support of its position. Each of these cases contains either dicta or positions now recognized as erroneous. Defendant cross-appellant first cites the old case *Sharpe v DAIIE*, 126 Mich App 144; 337 NW2d 12 (1983). Although *Sharpe* is distinguishable (as Defendant cross-appellant seems to readily admit on page 14 of its brief), our time will be better spent pointing out that it is wrongly decided. The Court in *Sharpe* baldly admitted that it was departing from the literal terms of the statute because, in essence, they did not think that the defendant ought to be penalized:

“While a literal reading of the statute which provides for interest on overdue personal protection insurance benefits would require interest to be paid where benefits were not paid within 30 days after plaintiff’s timely application for no-fault benefits, we believe that, **under the circumstances of this case**, defendant **should not be** held liable for interest on the overdue amount of benefits...”. Id at 149, emphasis supplied.

“...we conclude that defendant’s **justifiable** withholding of a portion of plaintiff’s benefits should not subject it to an interest penalty.” Id at 150, emphasis supplied.

A “literal reading of the statute” is another way of referring to the text of the statute; such a reading is what courts are required to do. Courts are not permitted to disregard the clear wording of a statute in favor of a result which seems more “fair” in a given case.¹ *Sharpe* represents judicial

¹ “Because the Legislature is presumed to understand the meaning of the language it enacts into law, statutory analysis must begin with the wording of the statute itself. Cit om. Each word of a statute is presumed to be used for a purpose, and, as far as possible, effect must be given to every clause and sentence. Cit om. The Court may not assume that the Legislature inadvertently made use of one word or phrase instead of another. Cit om. Where the language of the statute is clear and unambiguous, the Court must follow it. Cit. Om.” *Robinson v City of Detroit*, 462 Mich 439 (2000).

activism run wild.

Moreover, *Sharpe*, decided in 1983, is clearly an aberration from the long line of cases discussed above. Indeed, *Sharpe* was distinguished almost immediately in *Bach v State Farm*, 137 Mich App 128 (1984). The Court in *Bach* applied the rationale from the above discussed cases, and held that bad faith or unreasonableness was irrelevant in awarding no-fault penalty interest. I'm aware of no case since then that has followed *Sharpe*, and obviously the many cases mentioned above are wholly inconsistent with *Sharpe*. In *Clute, supra*, the Court compared its holding to that of *Sharpe*, and concluded that no-fault penalty interest was payable "...even where the refusal to pay was based on then-existing law and was made in good faith." *Clute, supra* at 539.

Defendant cross-appellant next cites *Lewis v Aetna Casualty*, 109 Mich App 136, 139; 311 NW2d 317 (1981), where the Court did say the following words: "Where a reasonable dispute exists as to coverage or the amount of benefits owing, the insurer is allowed to contest the claim under the act without penalty." However, as we have seen, a reasonable dispute is a defense only to penalty attorney fees, and is not a defense to *all* penalties under the no-fault law.

Defendant cross-appellant next cites *Kreighbaum v ACIA*, 170 Mich App 583 (1988) in support of its position. The Court of Appeals since has made clear that *Kreighbaum* was wrongly decided:

"The plaintiff in *Kreighbaum* sought penalty interest, as well as attorney fees and judgment interest, under the no-fault act. The Court in *Kreighbaum* denied the request, citing *Joiner v Michigan Mutual Ins Co*, 137 Mich App 464 (1984). However, when *Joiner* again came before this Court on this specific issue, this Court held that penalty interest is triggered when the [no-fault] benefits become overdue with no exception for the good faith of the insurer in denying liability. *Joiner v Michigan Mutual Ins Co*, 161 Mich App 285, 292 (1987). Consequently, an insurer's good faith in withholding payment of benefits is relevant in awarding attorney fees under the act, but is irrelevant to liability under the penalty interest statute." *Davis v Citizens*, 195 Mich App 323, 329 (1992).

Defendant cross-appellant next cites *Gobler v Auto-Owners (On Rem)*, 162 Mich App 717, 719; 413 NW2d 92 (1987). The Supreme Court had remanded the case to the Court of Appeals for determination of whether the plaintiff was entitled to attorney fees under §3148 of the no-fault law. After spending 2 pages discussing why the defendant's action were not unreasonable and were in good faith, the Court concluded with the following language: "The trial court's award of *penalty interest* and attorney fees is set aside." emphasis supplied. The Court's inclusion of penalty interest in this last sentence appears to be without basis.

Defendant cross-appellant also managed to find 2 newer unpublished decisions that don't support its conclusion at all. In *Hannawi v American Fellowship Mut Ins Co*, Ct. App. #207629 (November 12, 1999), the Court of Appeals *affirmed* a trial court's award of no-fault penalty interest. In doing so, the Court kind of bunched together the standards for both no-fault penalty interest (§3142) *and* no-fault penalty attorney fees (§3148). Nevertheless, the Court reached the right conclusion and affirmed the trial court.

Defendant cross-appellant finally cites *Copeland v Michigan*, Ct. App #218144 (March 9, 2001), a case involving the undersigned's office on behalf of Detroit Medical Center hospitals. The inclusion of *Copeland* in Defendant cross-appellant's brief is puzzling. *Copeland* involved a case where the no-fault insurer *did* pay benefits in a timely fashion, albeit with a check made payable to all with competing claims to the money. The Court in *Copeland* misstated the facts it had previously discussed when it said that "State Farm *withheld* payments partly to ensure that the State of Michigan and the hospitals received full payment...". *Copeland*, slip opinion at 3. The Court in *Copeland* correctly denied imposition of interest penalties, but it would be have been more accurate for the Court to have stated that it did so because the payment was timely made and therefore not

“overdue.”

**NO-FAULT PENALTY INTEREST
CASES SPECIFICALLY INVOLVING
COVERAGE DISPUTES**

After discussing the few cases from which it can somehow derive some supporting language, including the discredited *Sharpe* and the overruled *Kreighbaum*, Defendant cross-appellant makes a grand tour de force by blithely dismissing the large body of jurisprudence discussed above:

“Typically, the issue presented in the cases considering §3142 is whether the no-fault insurer can refuse to pay benefits under an insurance contract both parties agree exists, but the insurer challenges the charges incurred as either not reasonable or not reasonably necessary, or where there is a priority dispute between carriers.” Defendant cross-appellant’s brief, p17.

This statement is just plain wrong.² Several of the cases discussed above involved coverage disputes, although obviously in contexts different from that of the present case. I.e., in a number of cases, the defendant insurers, just like Defendant cross-appellant in the present case, have disputed their responsibility to pay *any* no-fault benefits. The saga of *Clute, supra*, is particularly instructive, as it is amazingly similar to that of the present case. In *Clute*, the no-fault insurer contested coverage, just like the insurer in the present case, though in *Clute* it was on the basis that the van in which plaintiff was sleeping was a parked car, for which no coverage is owed under §3106(1). The trial court initially agreed with the defendant, just like the trial court in the present case. The initial Court of Appeals panel agreed with the defendant on a 2-1 decision, *Clute v Gen Accident Co*, 142 Mich App 640; 369 NW2d 864 (1985), just like the initial Court of Appeals panel in the present

² It should also go without saying that, without regard to the factual and legal contexts of the cases that have been disputed, the plain wording of the statute requires imposition of interest in all such cases, including the present one.

case. *Morales v Auto-Owners*, Ct. App. #178479 (September 3, 1996). The Supreme Court in *Clute* reversed the majority of the Court of Appeals, *Clute v Gen Accident Co*, 428 Mich 871; 401 NW2d 615 (1987), just like the Supreme Court in the present case, *Morales v Auto-Owners*, 458 Mich 288; 582 NW2d 775 (1998). In *Clute*, the Supreme Court imposed coverage as a matter of law; in *Morales* the Supreme Court remanded for a jury trial which imposed coverage after finding facts.

Shanafelt v Allstate, 217 Mich App 625 (1996), is another case where the no-fault insurer denied coverage for no-fault benefits entirely, just as in *Clute* and just as in the present case. The Court of Appeals affirmed the trial court's determination of coverage, as well as the imposition of both prejudgment and no-fault penalty interests. *Shanafelt, supra* at 644.

Defendant cross-appellant's argument comes down to this: we didn't owe coverage until we were finally told by a jury that we owed coverage, and then we paid. Therefore, reasons Defendant cross-appellant, we shouldn't owe no-fault penalty interest. This argument is contrary to the clear language of the statute and the overwhelming weight of authority interpreting that statute.³

**C. DEFENDANT CROSS-APPELLANT HAS NOT DISPUTED THE FACTUAL
PREDICATES TO NO-FAULT PENALTY INTEREST UNDER MCL
500.3142**

As well discussed by now, the only predicate for liability for no-fault penalty interest is the receipt of "...reasonable proof of the fact and of the amount of the loss sustained." MCL 500.3142(2). The reasonableness of the proofs submitted by Plaintiff-appellee were not contested

³ It is also worth briefly reviewing some of the language from the above cases, which make clear that the Court of Appeals has consistently rejected Defendant cross-appellant's argument that interest is not owed before an initially valid or good faith defense is disapproved by the ultimate reviewing court: *Nash, supra*: "Interest is owing because the defendant's defense is not recognized by §3142(2)."; *Johnston, supra* at 216: "Defendant claims that prior to the *LeBlanc* decision it had no liability to pay medical benefits for which plaintiff had been reimbursed by Medicare and thus it is not required to pay interest on any amounts withheld prior to the *LeBlanc* decision."

in this case. As Defendant cross-appellant rightly admitted in its Statement of Facts:

“After the case was remanded, defendant stipulated that the medical expenses incurred by plaintiff were reasonable and that the services were reasonably necessary through responses to requests to admit. (Dkt. #89.)” Defendant cross-appellant’s brief, p4.

And, again in its Argument:

“For purposes of trial on remand, Auto-Owners did not contest the fact that plaintiff sent medical bills to Auto-Owners on particular dates, and that those bills reflected charges that were reasonably incurred for reasonably necessary services.” Defendant cross-appellant’s brief, p11, emphasis supplied.

And, in the Revised Judgment Of Principal Benefits Owed, Prejudgment Interest and No-Fault Penalties (attached as exhibit B):

“WHEREAS Defendant has stipulated to the reasonableness of charges and services incurred”

These admissions are **damning** and **dispositive** to any attempt by Defendant cross-appellant to now escape responsibility for payment of no-fault penalty interest. Defendant cross-appellant’s attempt to avoid this responsibility is to say that these admissions are not to be read as admissions that “...benefits became ‘due’ or ‘overdue’ for purposes of imposing no-fault penalty interest.” Defendant cross-appellant’s brief, p11.

In other words, Defendant cross-appellant apparently reasons, even though we admitted all of the factual predicates to the determination of whether a benefit is “overdue” (and therefore, all of the factual predicates to the imposition of no-fault penalty interest under §3142), no-fault penalty interest should not be imposed upon us.

Allow me to dwell on this for a moment longer. It is apparently Defendant cross-appellant’s position that it can admit to all of the predicates to no-fault penalty interest, but somehow avoid the obvious and inexorable implications of those admissions. To say this, Defendant cross-appellant is

arguing for the position that the wording of the statute does not apply to them. Defendant cross-appellant seeks a privileged place under the law: a finding that they are exempt from the rules governing everybody else. Moreover, Defendant cross-appellant's position violates the most fundamental principles of statutory construction discussed above.

RELIEF REQUESTED

Plaintiff-appellee respectfully requests that this Court deny the relief requested by Defendant cross-appellant in its Cross-Application for Leave to Appeal, and leave undisturbed the decision of the Court of Appeals with respect to no-fault penalty interest awarded by the trial court pursuant to MCL 500.3142.

Respectfully submitted,

MILLER, SHPIECE & TISCHLER, P.C.

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Dated: December 11, 2002

STATE OF MICHIGAN
IN THE SUPREME COURT

ALICE JO MORALES, as Guardian and
Conservator of ANTONIO MORALES,
a/k/a ANTHONY MORALES,
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Cross-Appellee

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AUTO OWNERS INSURANCE COMPANY,
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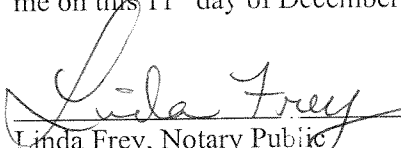
PROOF OF SERVICE

STATE OF MICHIGAN)
OAKLAND COUNTY)

Robin R. Stewart, an employee of MILLER, SHPIECE & TISCHLER, P.C., being first duly sworn, deposes and says that on December 11, 2002, she served a copy of PLAINTIFF/APPELLANT CROSS-APPELLEE'S BRIEF IN OPPOSITION TO DEFENDANT/APPELLEE CROSS-APPELLANT AUTO OWNERS INSURANCE COMPANY'S CROSS APPLICATION FOR LEAVE TO APPEAL and this PROOF OF SERVICE upon attorney Lori M. Silsbury, 800 Michigan National Tower, Lansing, Michigan 48933-1742, by enclosing a copy of the same in an envelope properly addressed, and by depositing said envelope in the United States Mail with postage thereon having been fully prepaid.

Subscribed and sworn to before
me on this 11th day of December, 2002.


Robin R. Stewart


Linda Frey, Notary Public
Oakland County, Michigan.
My Commission Expires: 7/01/03

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

ANTHONY R. and ALICE J. MORALES,

Case No. ST97-01123

Debtors.

Chapter 7

ORDER FOR INTERIM DISBURSEMENT TO CREDITORS

At a session of said Court held in and for this District at Grand Rapids, Michigan, on JAN 19 2001, 2000.

PRESENT: HONORABLE JO ANN C. STEVENSON, Bankruptcy Judge

This matter having come before the Court on the Motion For Authority to Disburse Funds to Creditors, and the Court having reviewed the matter and being fully advised in the premises,

IT IS ORDERED that the Motion for Authority to Disburse Funds to Creditors is approved.

IT IS FURTHER ORDERED that the claims of Rainbow Rehabilitation Center, Mediplex, and Tamarack Rehabilitation are hereby allowed as timely filed unsecured claims.

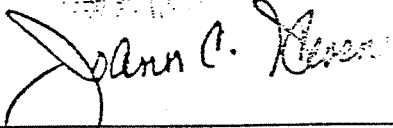
IT IS FURTHER ORDERED that the Trustee may disburse 85% of the amount due on said claims to the service providers, or their successors or assigns, as follows:

Rainbow Rehabilitation	\$ 45,068.18
Mediplex	\$140,012.97
Tamarack Rehabilitation	\$112,300.14

IT IS FURTHER ORDERED the Trustee may disburse \$15,000 to the Debtors for their exemption of the recovery for replacement services, and \$30,181.43 for their exemption of the wage loss recovery.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon the US Trustee, Wayne J. Miller, Michael P. Corcoran, Anthony R. and Alice J. Morales, Rainbow Rehabilitation, Mediplex, and Tamarack Rehabilitation.

Dated: JAN 19 2001



Honorable Jo Ann C. Stevenson

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

ANTHONY R. and ALICE J. MORALES,

Case No. ST97-01123

Debtors.

Chapter 7

ORDER APPROVING STIPULATION
REGARDING INSURANCE PROCEEDS

At a session of said Court held in and for this District at Grand
Rapids, Michigan, on DEC 1 2000, 2000.

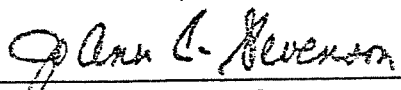
PRESENT: HONORABLE JO ANN C. STEVENSON, Bankruptcy Judge

This matter having come before the Court on the Motion For Approval of
Stipulation Regarding Insurance Proceeds, and the Court having reviewed the matter and
being fully advised in the premises,

IT IS ORDERED that the Stipulation Between Trustee and Debtors Regarding
Insurance Proceeds is approved.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon the US
Trustee, Wayne J. Miller, Michael P. Corcoran, and Anthony R. and Alice J. Morales.

Dated: DEC 1 2000



Honorable Jo Ann C. Stevenson

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MISSAUKEE

ALICE JO MORALES, as Guardian of
ANTONIO MORALES, a/k/a ANTHONY
MORALES, a legally incapacitated person,

Case No. 92 2882-NF
Hon. Charles Corwin

Plaintiff,

v.

AUTO OWNERS INSURANCE COMPANY,
a Michigan Corporation,

Defendant.

Examined, entered & countersigned
by me this 3-26-2001, a true copy
[Signature] Deputy Clerk of Court

MILLER, SHPIECE & ANDREWS, P.C.
BY: WAYNE J. MILLER (P31112)
Attorneys for Plaintiff
26211 Central Park Blvd., Suite 500
Southfield, MI 48076
(248) 945-1040

BENSINGER, COTANT, MENKES & AARDEMA, P.C.
BY: DANIEL J. BEBBLE (P51257)
Attorneys for Defendant
308 West Main Street, Box 1000
Gaylord, MI 49735
(517) 732-7536

**REVISED JUDGMENT OF PRINCIPAL BENEFITS OWED,
PREJUDGMENT INTEREST AND NO-FAULT PENALTIES**

At a session of said Court held in the City of Cadillac,
County of Missaukee, State of Michigan

on MARCH 23, 2001

PRESENT: HON CHARLES D. CORWIN
CIRCUIT COURT JUDGE

WHEREAS this matter was tried to a verdict by jury on February 24, 2000;

WHEREAS the jury rendered its verdict in favor of the Plaintiff and the Court having established and adjudicated that Plaintiff is entitled to, and Defendant is responsible for, no-fault personal injury protection benefits for injuries arising out of the motor vehicle accident of December 3, 1991;

WHEREAS Defendant has stipulated to the reasonableness of charges and services incurred;

WHEREAS the principal balance of benefits owed, incurred through April 30, 2000 only, together with prejudgment interest through September 1, 2000, amounts to \$998,152.95;

WHEREAS the State of Michigan has made payments in the amount of \$98,970.82, which are subject to reimbursement;

WHEREAS the Court having previously ordered that Plaintiff is entitled to, and Defendant is responsible for, no-fault penalty interest pursuant to MCL 500.3142 in an amount to be determined; and

WHEREAS the Court having previously ordered that Plaintiff is entitled to, and Defendant is responsible for, no-fault penalty attorney fees pursuant to MCL 500.3148 for unreasonably disputing Plaintiff's entitlement to no-fault penalty interest, in an amount to be determined;

WHEREFORE, IT IS HEREBY ORDERED that judgment is entered in favor of the Plaintiff for the principal balance of benefits together with prejudgment interest (\$998,152.95), and for the amount of payments made by the State of Michigan (\$98,970.82), in the total amount of \$1,097,123.77;

IT IS FURTHER ORDERED THAT Defendant shall pay to Plaintiff no-fault penalty interest on the incurred charges in the amount of \$278,092.69. Prejudgment interest owed pursuant to this judgment, revise to reflect no-fault penalty interest, is \$260,229.62 through September , 2000, with prejudgment interest to continue to accumulate until satisfaction of judgment;

IT IS FURTHER ORDERED THAT Defendant shall pay to Plaintiff no-fault penalty attorney fees for disputing their obligation to pay no-fault penalty interest in the amount of \$2,540.00;

IT IS FURTHER ORDERED THAT Plaintiff shall execute a partial or complete Satisfaction of Judgment to the extent of payments received pursuant to this Order of Judgment;

IT IS FURTHER ORDERED THAT the State of Michigan shall execute a partial or complete Satisfaction of Judgment to the extent of payments received pursuant to this Order of Judgment;

IT IS FINALLY ORDERED THAT this Judgment is a final judgment disposing of all the claims and adjudicating all the rights and liabilities of all the parties.

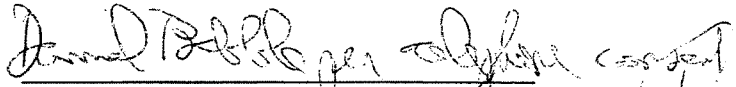


Honorable Charles D. Corwin
Circuit Court Judge

Approved as to Form:



WAYNE J. MILLER P31112
Attorney for Plaintiff


on 3/19/01

DANIEL J. BEBBLE (P51257)
Attorney for Defendant

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MST

Wayne J. Miller
Michael R. Shpiece
Ronni Tischler
Carrie Kennedy
Ellen C. Busch
Maureen H. Kinsella

MILLER, SHPIECE & TISCHLER, P.C.

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Of Counsel
Lori-Ann Rickard

Brenda Kaplan
Paralegal

December 11, 2002

VIA OVERNIGHT DELIVERY

Clerk of Court
Michigan Supreme Court
925 W. Ottawa Street, 4th Floor
Lansing MI 48993

Re: Alice Jo Morales v Auto Owners Insurance Company
Missaukee County Circuit Court Case No.: 92-2882-NF
Court of Appeals Docket No.: 233826
Our File No.: 628.01

Dear Clerk:

Enclosed for filing in your usual manner please find an original and seven additional copies of Plaintiff/Appellant Cross-Appellee's Brief in Opposition to Defendant/Appellee Cross-Appellant Auto Owner's Cross Application for Leave to Appeal and Proof of Service.

Thank you for your attention in this matter.

Very truly yours,

MILLER, SHPIECE & TISCHLER, P.C.

Wayne J. Miller
WAYNE J. MILLER

WJM/rrs

Enclosure

cc: Lori M. Silsbury (w/enclosure)

